SUPREME COURT OF VICTORIA

COURT OF APPEAL

S EAPCR 2021 0133

BRONSON INTERLANDI — Applicant

v

THE QUEEN — Respondent

JUDGES:	PRIEST and McLEISH JJA
WHERE HELD:	MELBOURNE
DATE OF HEARING:	5 April 2022
DATE OF JUDGMENT:	5 April 2022
MEDIUM NEUTRAL CITATION:	[2022] VSCA 55
JUDGMENT APPEALED FROM:	*DPP v Interlandi* [2021] VCC 666 (Judge Wilmoth)

CRIMINAL LAW – Appeal – Sentence – Obtaining financial advantage by deception and using false document – Imprisonment for one year – Three months of sentence cumulative on sentences for drug and dishonesty charges – Total effective sentence of 6 years' imprisonment with 3 years non-parole – Parity – Co-offender sentenced to fine without conviction – Leave to appeal granted – Appeal allowed – Applicant resentenced to $5,000 fine with conviction – Resulting total effective sentence 5 years and 9 months' imprisonment with 2 years and 9 months non-parole.

APPEARANCES:	Counsel	Solicitors
For the Applicant	Mr P J Smallwood	Paul Vale Criminal Law
For the Respondent	Mr C Boyce QC	Ms A Hogan, Solicitor for Public Prosecutions

PRIEST JA
McLEISH JA:

1 The applicant faced charges in the County Court spread across three indictments (and certain related summary offences) as follows:

- Indictment No. J10558426.1 ('the first indictment'): Obtaining a financial advantage by deception[1] ('the vending machine charge');
- Indictment No. L11394624.1 ('the second indictment'): Trafficking in a drug of dependence, cocaine (charge 1); possessing a drug of dependence, Xanax (charge 2); and knowingly dealing with the proceeds of crime (charge 3); and related summary offences of committing an indictable offence whilst on bail and contravening a conduct condition of bail ('the drug charges'); and
- Indictment No. L12387376 ('the third indictment'): Obtaining a financial advantage by deception[2] (charge 1) and using a false document[3] (charge 2) ('the accounting charges').

2 On 17 August 2020, the applicant pleaded guilty to the vending machine charge on the first indictment; and on 18 November 2020 he pleaded guilty to the accounting charges on the third indictment. He pleaded guilty to the drug charges on the second indictment on 16 February 2021.

3 Following a plea over several days, on 21 May 2021 the judge sentenced the applicant to a total effective sentence of six years' imprisonment, with a non-parole period of three years, in accordance with the table set out below.[4]

4 The present application for leave to appeal relates only to the sentence imposed on the vending machine charge on the first indictment and to the sentence imposed on the accounting charges on the third indictment.

1 *Crimes Act 1958*, s 82(1). The maximum sentence is 10 years' imprisonment.

2 Ibid.

3 *Crimes Act 1958*, s 83A(2). The maximum sentence is 10 years' imprisonment.

4 At [8].

5 There are two proposed grounds of appeal. The first of those grounds relates to the sentence on the accounting charges on the third indictment, and the second proposed ground concerns the sentence on the vending machine charge on the first indictment. They are formulated as follows:

> 1 There was an error in the individual sentences imposed on both charge 1 and charge 2 on [the third indictment] as well as the order for cumulation made on charge 1 on that indictment arising from:
>
> (a) a contravention of the parity principle; and
>
> (b) those sentences each being manifestly excessive.
>
> 2 There was an error in the individual sentence imposed on the charge on [the first indictment] as well as the order for cumulation made on that charge arising from those sentences each being manifestly excessive.

6 Significantly, the respondent concedes the contravention of the parity principle asserted in the first ground of appeal. Further, the respondent concedes that this Court should accordingly set aside the sentence on the accounting charges and should re-sentence the applicant on those charges 'to a penalty consistent with the notion of equal justice'. Despite those concessions, however, the respondent contends that, as part of the resentencing exercise, the Court should not fix a lesser non-parole period. As to the second ground of appeal, the respondent contends that it is not made out.

7 We are of the opinion that we should act on the respondent's concession on ground 1. Thus, we will grant leave to appeal on that ground, allow the appeal and resentence the applicant as set out below.[5] We would not uphold ground 2.

The sentence imposed in the County Court

8 It is convenient to set out the applicant's sentence in tabular form:

[5] At [107] et seq.

9	**First Indictment: Vending machine charge**		
10 ge	**11 Offence**	**12 S entence**	**13 Cu mulation**
14	15 Obtaining a financial advantage by deception	16 2 years	17 6 months 18 (on second ind't)
19	**Total effective sentence on first indictment**	20 2 years	
21	**Second Indictment: Drug charges**		
22 ge	**23 Offence**	**24 S entence**	**25 Cu mulation**
26	27 Trafficking a drug of dependence (Cocaine)	28 5 years	29 Ba se
30	31 Possessing a drug of dependence (Xanax)	32 6 months	33 —
34	35 Knowingly deal with proceeds of crime	36 1 year	37 3 months
38	**Related summary offences**		
39	40 Commit indictable offence whilst on bail	41 1 month	42 —
43	44 Contravene a Conduct Condition of bail	45 1 4 days	46 —
47	**Total effective sentence on second indictment**	48 5 years and 3 months	
49	**Third Indictment: Accounting charges**		
50 ge	**51 Offence**	**52 S entence**	**53 Cu mulation**
54	55 Obtaining a financial advantage by deception	56 1 year	57 3 months 58 (on

			second ind't)
59	60 Using a false document	61 1 year	62 —
63	**Related summary offence**		
64	65 Commit indictable offence whilst on bail	66 1 month	67 —
68 Total effective sentence on third indictment		69 1 year	
70			

71 Global total effective sentence	72 6 years' imprisonment
73 Non-parole period	74 3 years
75 Pre-sentence detention	76 345 days
77 Section 6AAA statement	78 7 years and 6 months' imprisonment, with 4 years and 6 months non-parole
79 Other orders	80 Forfeiture and disposal on drug charges

The offending

The drug charges

81 Although the applicant does not seek to challenge the sentence imposed on the drug charges, so as to appreciate his criminality overall, it is necessary to summarise briefly his drug-related activities.

82 In October 2019, investigators from the Drug Task Force commenced an investigation in relation to drug trafficking in and around the inner suburbs of Melbourne. That investigation revealed the applicant to be co-ordinating a drug trafficking operation, whereby he would supply cocaine to co-offenders, Anthony

Belfiore and Matar Dvir-Ovadia. Belfiore and Dvir-Ovadia or other 'runners' would then distribute the cocaine to members of the public.

83 Charge 1 on the second indictment related to cocaine trafficking between 19 November 2019 and 10 June 2020. Charge 2, possessing Xanax, and charge 3, possessing proceeds of crime ($12,850 cash), related to 10 June 2020, when police executed search warrants on premises connected to the applicant. A total of 376.6 grams of (mixed) cocaine was also located. The two summary charges, committing an indictable offence while on bail and contravening a conduct condition of bail, related to the applicant's failure to reside at a specified address.

84 The judge found that the applicant 'organised and controlled' a 'sophisticated' drug trafficking 'business', which was 'set up for profit making' and 'motivated by financial reward'. The applicant 'made the decisions and supplied the equipment and drugs to the others'.

The vending machine charges

85 At times relevant to the charges on the first indictment, the applicant worked full time in his plumbing business in the Leongatha area. He and a friend, Jess Attenborough, incorporated a company, The Lean Aussie Machine Pty Ltd ('Lean Machine'). Two months later, another of the applicant's friends, Christopher Wright, joined and became a director of Lean Machine alongside the applicant and Attenborough. Lean Machine's business was the supply of healthy food options in vending machines.

86 Each director contributed financially to Lean Machine and all were shareholders, the applicant being the majority shareholder. The company used mortgage brokers to obtain leasing finance from a number of finance companies, enabling it to obtain the vending machines from a company called Vendzone. The finance companies would pay Vendzone the cost of the machine. Lean Machine leased the machines from the finance companies — which retained ownership of the machines — and would pay monthly lease instalments to the finance companies.

87 In mid-2014, the applicant ceased plumbing and began working full time for Lean Machine. Wright also commenced working full time for Lean Machine in early 2015. From about this time, the relationship between the applicant and the other two directors began to deteriorate. By that time, Lean Machine had leased 36 vending machines, located at various sites. The business began to struggle. As a result, Attenborough left it at the end of 2015, as did Wright in early 2016. When the business was failing, the applicant asked his family for financial assistance, which they provided, hoping he could trade out of financial trouble. The applicant was working 60 to 70 hours a week, travelling around the State, manually filling the vending machines himself.

88 In early 2016, the applicant approached the Melbourne Vending Company, wanting to sell two vending machines to them. That company purchased two machines for $11,000, and the applicant began negotiating for the sale of the remaining machines. Since the machines were leased by Lean Machine, the finance companies retained ownership over them, the applicant had no right to sell them. The applicant did not tell Melbourne Vending Company that the machines were leased, and stated that his business owned the machines outright. Melbourne Vending Company bought a further three machines for $16,500, followed by a further 24 machines for $174,000. There was an additional amount to be paid for stock and the float, being the amount of the coins inside the machines. The agreement drawn up for this latter sale provided that all machines were free of any encumbrances.

89 During July 2016, a total of $201,500 was paid by instalments into either the applicant's personal bank account, or that of the business. The amounts paid into the business account were transferred by the applicant into his personal account. As we have mentioned, neither the applicant, nor the business, were the owners of the machines, or had permission to sell them. The applicant made no attempts to pay the outstanding amounts owed to the finance companies. He admitted so much to his former business partner, Attenborough, and stated that he owed people money that he needed to pay back.

90 While the applicant's deception resulted in him receiving $201,500, Melbourne Vending Company suffered only minor loss, because it retained possession of the 29 machines for which it had paid. (An exception was a settlement with the finance company Betterrent, in the amount of $3,300.) The actual loss incurred by the finance companies was $99,056, being the balance of the amounts owed to them by Lean Machine.

91 In her sentencing reasons, the judge said that the 'offending in relation to the vending machines was deliberate and resulted in a very significant loss to the finance companies of around $99,000'. She noted the submission of the applicant's counsel that 'the deception should be viewed through the prism of a first-time business venture which failed and that the offence occurred through [the applicant's] efforts to recoup the loss'. The applicant, the judge said, 'had become anxious, exhausted and desperate, suffering from insomnia'. Eventually, he was 'pursued by debt collectors, resulting in [his] bankruptcy'.

The accounting charges

92 The third indictment related to the applicant's use of a false document (charge 2), to obtain the sum of $7,095.90 by deception (charge 1).

93 At the relevant time, the applicant's accountant, James Mavrokokki, operated an accounting firm called Accountancy Matters. The applicant became friendly with Mavrokokki and entered into an agreement with him to falsely represent that the applicant was employed by him as a business development manager and paid an income. This was done to enable Mavrokokki's accounting firm to evade tax.

94 Between 30 March and 1 June 2020, Mavrokokki would pay the applicant $790.59 per week before tax and the applicant would give Mavrokokki back the same amount in cash each month. Mavrokokki would then, with the applicant's knowledge, lodge false payslips with the Australian Tax Office ('ATO'), claiming that the applicant was employed by Accountancy Matters. The intention was to induce the ATO to accept the payslips as genuine, thereby prejudicing the ATO. (The applicant committed

these offences while on bail, hence the related summary charge.)

95 In her sentencing remarks, the sentencing judge observed:

> The financial loss for the ATO from this offending was relatively modest and the offending was over a short period. The idea was that of [the applicant's] accountant. He generated the false document and he was the principal beneficiary. It is offending at the lower end of the range of seriousness for this matter.

Ground 1: Parity on accounting charges

96 Ground 1 — as the respondent properly conceded — must succeed.

97 At the time the applicant was sentenced, his former accountant, James Mavrokokki, had not been dealt with. Subsequently, Mavrokokki pleaded guilty in the Magistrates' Court to charges of obtaining a financial advantage by deception and using a false document (these two charges effectively replicating the charges on the third indictment). On 19 August 2021, a magistrate, without conviction, imposed an aggregate fine of $5,000 on Mavrokokki for the two offences.

98 There was not much to distinguish the cases of the applicant and his co-offender. Mavrokokki — whom, the judge found, was 'the principal beneficiary' of the fraud — was slightly older than the applicant. He had also made a statement implicating the applicant (indicating co-operation with the authorities); may have been subject to extra-curial punitive consequences (for example, loss of, or restrictions on his right to practice as an accountant); and, unlike the applicant, was not on bail at the time of offending.

99 As the respondent fairly conceded, however, none of these distinguishing features justified the substantial disparity between the sentence imposed on the principal offender, Mavrokokki — an aggregate fine without conviction — and the sentence of 12 months' imprisonment imposed on the applicant, three months of which was ordered to be served cumulatively.

100 We would thus uphold the first ground; grant leave to appeal; allow the appeal on

that ground; and set aside the sentences of imprisonment imposed on charges 1 and 2 on the third indictment. In all of the circumstances, including the fact that the applicant's offending must be viewed against the backdrop of his overall criminality, we would convict the applicant on those charges,[6] and impose a fine of $5,000.

Ground 2: Is the sentence on the vending machine charge manifestly excessive?

101 Under cover of ground 2, the applicant's counsel placed some reliance on the prosecution's submission to the sentencing judge on 16 February 2021 that, 'looked at in isolation', a community correction order ('CCO') 'would have been within the range' on the vending machine charges.

102 The prosecution's submission was made, however, against the background that the applicant initially pleaded guilty to the vending machine charge on 17 August 2020, but subsequently pleaded guilty to the accounting charges (on 18 November 2020) and drug charges (on 16 February 2021). As the passage from the prosecutor's submissions to the sentencing judge extracted below demonstrates, by the time that the applicant pleaded guilty to the drug charges, the prosecution was no longer conceding that a CCO was necessarily appropriate:[7]

> [PROSECUTOR]: In relation to [the applicant], Your Honour, can I also say this. It was always the Crown's view, for what it's worth – and I've discussed this with [defence counsel] and he's made his submissions – but it was always the Crown view that in relation to – *before we got adjourned last time* it was the *Crown's position and my instructions were that for the vending machine offences a community corrections order would have been within the range for those looked at it in isolation*. My instructions now for the third indictment, which is the matter with the accountant, my instructions are that a fine would be within the range for those offences – a fine, a monetary … fine would be within the range for the third indictment offences, that is the obtaining a financial advantage by deception. …
>
> Of course the drug trafficking charge in relation to [the applicant] overwhelms to some extent the breadth of each [of the] matters, but of course they need to be looked at individually and proportionately and as a matter of completeness I indicate to Your Honour my instructions in relation to that.

[6] The imposition of a conviction itself constitutes punishment. See *Sentencing Act 1991*, s 7. See also *R v Sessions* [1998] 2 VR 304, 313 (Hayne JA).

[7] Emphasis added. Indeed, once it was apparent that the drug charges called for a significant term of imprisonment, a CCO was no longer a sentencing option: *Sentencing Act 1991*, s 44(1).

103 We are not persuaded that the sentence imposed on the vending machine charge — two years' imprisonment, six months of which is to be served cumulatively with the sentences on the drug charges — is wholly outside the range of sentences open in the proper exercise of the sentencing discretion, albeit we regard it as stern.

104 The applicant's was a brazen and deliberate fraud divided into three separate instances of dishonest conduct over a period of six weeks. The applicant initiated the offending by approaching the prospective purchaser and initially selling two vending machines. He then sold a further three machines. Finally, he sold 24 machines. He sold the machines knowing that he had no entitlement to do so, and obtained the sum of $201,500 in the process. The owners and lessors of the machines were the primary victims of the fraud and lost $99,056.

105 We accept that the fraud arose in the context of a failed business venture, in circumstances where the applicant had borrowed heavily from family and was attempting to recoup his losses, and that ultimately he was bankrupted. The applicant was not motivated by greed. We also accept — as did the judge — that the applicant's prospects of rehabilitation appear to be good, given that he had no prior convictions; his overall offending occurred in a relatively confined period; psychological testing indicated that he does not have 'an entrenched criminal attitude'; and one is left with 'an impression of an offender with some insight and motivation to improve, who is unlikely to offend again'. Further, we accept — as the judge recognised — that the applicant's plea of guilty had high utilitarian value — particularly given its entry during the pandemic[8] — and indicates remorse.

106 Despite these and other matters in mitigation, we consider that the nature of the applicant's offending warranted a term of imprisonment. And, as we have indicated, we consider that the term of imprisonment imposed by the judge is not outside the available range, albeit that we consider it to be at the upper extremity of the available range for this offender and this offending. Moreover, some cumulation

[8] See *Worboyes v The Queen* (2021) 96 MVR 344, 356–7 [35]–[39] (Priest, Kaye and T Forrest JJA); *Barnard (a pseudonym) v The Queen* [2022] VSCA 42, [18] (Priest and T Forrest JJA).

upon the sentence imposed on the drug charges was required to reflect the separate criminality of the vending machine charges, six months' cumulation being within the appropriate range. In these circumstances, appellate intervention is not justified.

Conclusion

107 As we have indicated, we will grant leave to appeal on the first ground and allow the appeal. We will set aside the sentence for the accounting charges and, in lieu, convict the appellant and sentence him to pay an aggregate fine of $5,000 on charges 1 and 2 of the third indictment (No. L12387376). All other individual sentences imposed by the County Court will be confirmed.

108 With the setting aside of the sentences on the accounting charges, the total effective sentence will thus be five years and nine months' imprisonment, upon which we will fix a new non-parole period of two years and nine months.

109 All other orders and declarations made by the County Court will be confirmed.

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